IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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CIVIL SECOND APPEAL No. 177 of 1983

DED RAJ
V/S
SITA RAM & ORS

Mr. AK RAJVANSHY, for the appellant / petitioner

Mr. RR NAGORI, for the respondent

Date of Order : 10.7.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

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This appeal has been filed by the defendant against the judgments and decrees, whereby the plaintiff's suit for eviction from the shop has been decreed.

The facts are, that the plaintiff had filed a suit for eviction on 29.9.1973, alleging the tenancy to be monthly tenancy according to Hindi Calendar month, starting from Sudi Ekam to Badi Amavashya. It was alleged, that the plaintiff purchased the shop from the erstwhile owner Gopi Ram on 15.9.1970, at which time a sum of Rs. 200/- was in arrears against the defendant being rent upto Jeth Sudi Ekam Samvat 2026. It was alleged that in the year 1968, there had been a compromise between the erstwhile owner, and the present defendant, in suit no. 535/68, to the effect, that the defendant will continue to pay monthly

rent @ Rs. 12.50, from Posh Sudi Ekam Samvat 2025. Thus, the defendant was alleged to be defaulter, ground of reasonable and bonafide necessity was also taken, and it was alleged, that the shop is in a dilapidated condition.

The defendant contested the suit by filing written statement on 19.3.1974, alleging that no rent is outstanding, the plaintiff or her son do not live in Churu, therefore, they do not need the premises reasonably and bonafide. Apart from the fact, that they have also filed suits against other tenants as well. Then, it was alleged that the defendants are carrying on confectionery business which does not cause any damage to the property. Various issues were framed, wherein issue no. 2 related to the question of default, issues no. 3 and 5 related to reasonable and bonafide necessity, inasmuch as, issue no.3 comprehended the plaintiff's requirement for her family, and issue no.5 comprehended the question of requirement to reconstruct the building. Learned trial court decreed the suit on the ground of default, and by deciding issue no. 5, in favour of the plaintiff, and under this issue, the plaintiff's case was found to be covered by Section 13(1)(k)(ii) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, hereafter referred to as the Act. The question of reasonable and bonafide necessity of the plaintiff as covered by issue no. 3, was decided against the plaintiff. Regarding default, it was held, that the

defendant is a defaulter, inasmuch as, it was not believed that the tenancy is yearly one, and was found to be monthly one. Then, it was found, that the arrears of rent as on the date of the suit have not been fully paid, as it is deficit by Rs. 200/-, apart from the fact, that even *pendentelite* rent has been deposited annually, and not monthly, despite the fact, that in the earlier litigation, between the erstwhile owner and the defendant tenant, the decree was passed to the effect, that the defendant will pay rent @ Rs. 12.50 per month. Thus, the decree for eviction was passed. In appeal it was found, that the learned trial court, vide order dt. 6.9.1975, had ordered the defense against eviction to be struck off, but in appeal that order was set aside vide order dt. 21.5.1976, and the amount of Rs. 550/- was found to have been deposited on 22.12.1973. Then, it was found, that thereafter rent upto 19.12.1974 and 19.3.1975 was deposited on 17.2.1975, and 19.2.1975 respectively. Then, rent from 20.3.1975 to 19.3.1976 was deposited vide application dt. 16.2.1976. Then, rent from 20.3.1976 to 19.3.1977 was deposited vide application dt. 19.1.1977. Similarly the rent from 19.3.1977 to 20.3.1978 was deposited vide application dt. 22.2.1978, and rent from 20.3.1978 to 20.3.1979 was deposited vide application dt. 20.1.1979. Thus, it was found, that pending suit the tenant has not deposited the rent in accordance with law, and has thus committed default, and thus the decree for eviction on this ground was maintained. Regarding issue no. 5, it was

held, that since while deciding issue no. 3, the plaintiff's bonafide requirement has not been found, and the requirement of new construction, does not fall within Section 13(1)(k)(ii), as it is not the case, that the premises has become unsafe for human habitation. Thus, the finding on issue no. 5 was reversed, and the decree for eviction was maintained on the ground of default only.

Assailing the impugned decree the learned counsel for the appellant submitted, that since the appellant had raised a dispute about the arrears of rent, and no determination was made by the learned trial court about the payable amount, on the face of language of Section 13(5) of the Act, the liability of the tenant had not at all attracted, to continue to pay or deposit rent month by month by 15th of each succeeding month, and since, vide order dt. 21.5.1976 striking out of the defense, as ordered by the learned trial court vide order dt. 6.9.1975, had been set aside, on the face of language of Section 13(7) of the Act, no decree for eviction could be passed on the ground of default.

On the other hand, learned counsel for the respondent, by reading the provisions of Section 13(4), 13 (5), and 13(6) of the Act, not only supported the impugned decree for eviction, but also submitted, that the respondent has filed cross objections, for assailing the

finding recorded by the learned lower Appellate Court on issue no.5, and submitted that, that finding is wholly unsustainable, as it is established, that the premises has become unsafe for human habitation. Apart from default the decree for eviction should be passed on the ground of Section 13(1)(k)(ii) as well.

I have considered the submissions. At the outset I may refer to the order dt. 6.9.1975, and a look thereat shows, that the controversy raised therein was, that the defendant appeared on 20.12.1973, which was the first date of hearing, but on that date he neither tendered nor deposited the rent, and therefore, he has become defaulter, and the learned trial court found, that the defendant was to appear on 20.12.1973, and on 21.12.1973 he submitted application for depositing the amount, while he was required to submit application on 20.12.1973, which having not been done he has become defaulter, and thus, the defense was struck off. In appeal it was found, that since the summon was not accompanied with the copy of the plaint, the service cannot be said to be sufficient, and in the present case the defendant appeared on 20.12.1973, and on that day itself he submitted application for depositing the entire arrears of rent along with interest, and cost, which application is available at page D-15 of the record, and from the other attending circumstances it was found, that the application was filed on 21.12.1973, and not on

20.12.1973. However, the learned lower Appellate court by simply cataloging various conflicting judgments of this Court, and without giving reasons of his own, for reasons best known to him, just set aside the order striking out defense. Since the learned Presiding Officer, who passed that order, has already retired, I do not feel inclined to say anything more, on this aspect, at this stage. However, the question that requires to be considered is, as to whether the decree for eviction can be sustained on the ground of default.

Before proceeding further, for ready reference, I may quote the provisions of Section 13(4), 13(5), 13(6) and 13(7) of the Act, as they existed at the relevant time, which read as under:-

> "(4) In a suit for eviction on the ground set forth in clause (a) of sub-section (1), with or without any of the other grounds referred to in that sub-section, the tenant shall, on the first date of hearing or on or before such date as the court may on an application made to it, fix in this behalf, or within such time, not exceeding two months, as may be extended by the court, deposit, in court or pay to the landlord an amount calculated at the rate of tent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made, together with interest on such amount calculated at the rate of six per annum from the date when any such amount was payable upto the date of deposit and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equal to the rent at that rate.

(5) If in any suit referred to in sub-section (4), there is any dispute as to the amount of rent payable by the tenant, the court shall determine, having regard to the provisions of this Act, the amount to be deposited or paid to the landlord by the tenant, within fifteen days from the date of such order, in accordance with the provisions of sub-section (4).

(6) If a tenant fails to deposit or pay amount referred to in sub-section (4) or sub-section (5) on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

(7) If a tenant makes deposit or payment as required by sub-section (4) or sub-section (5), no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the court but the court may allow such costs as it may deem fit to the landlord;

Provided that a tenant shall not be entitled to any relief under this sub-section if having obtained such benefit or benefits under section 13-A in respect of any such accommodation if he again makes a default in the payment of rent of that accommodation for six months."

In this sequence I may straightway come to the appellant's application, purportedly dated 20.12.1973, and found to have been filed on 21.12.1973, which reads as under:-

"न.मुकदमा सन् 73 ता.पेशी 20-12-73

झीमी देवी वादनी vs. डेडराज - प्रतिवादी

दावा

श्रीमानजी,

उपरोक्त मुकदमें में 200 रू बेचान से पूर्व के किराये की बाबत दावा किया है हालांकि वह तारीख बेचान से ही किराया प्राप्त करने की अधिकारी है उससे पहले की नहीं । वादनी के वकील को किराया आज ओफर किया गया था मगर वोह लेने से इन्कार कर दिया ।

अत: 450 रू किराये के और 70 रू खर्चे के 18 रू ब्याज के इस प्रकार कुल 538 रू वाजिब होते हैं जिनको प्रतिवादी जमा करवाता है यदि वादी हिसाब की फलावट में किसी प्रकार का झगड़ा उठावे तो बरफे हुज्जत प्रतिवादी 12 रू और अधिक जमा करवा रहा है इस प्रकार कुल 550 रू जमा करवाने के आदेश प्रदान किये जावे ।

प्रार्थी

डेडराज s/o बलूराम कन्दोई
मा.वकील ता.20.12.73"

Thus, a look at this application makes it clear, that the appellant had raised a controversy, only to the effect, that the plaintiff is not entitled to claim rent from the date prior to the purchase of the property by her, and the rent for rest of the period along with interest, and costs was calculated by the defendant, and no controversy whatever was raised, rather it was pleaded, that in case the plaintiff raises any objection about any calculation of amount, then in order to avoid all controversy, he is depositing Rs. 12/- extra. Meaning thereby, that according to the defendant, within the meaning of Section 13(5) of the Act, no dispute, as to the amount of rent payable by the tenant was raised, requiring to be determined by the Court, rather the defendant purported to act in accordance with sub-section 4, inasmuch as, purportedly on the first date of hearing deposited the

amount of rent, calculated for the period, for which he may have committed default, and thus, per force of language of sub-section 4, he was obliged to deposit or pay the rent month by month, by 15th of each succeeding month.

It is a different story, that the suit was filed on 29.9.1973, claiming Rs. 650/- as arrears of rent upto Asoj Badi Amavashya Samvat 2030, and the defendant had deposited rent to the tune of Rs. 450/-, inasmuch as, out of rent of Rs. 650/- claimed by the plaintiff, he contended that Rs. 200/- are for the period prior to the property having been purchased by the plaintiff, and purportedly deposited Rs. 450/- as rent, and Rs. 70/- as expenses, and Rs. 18/- for interest. Obviously this was the rent as claimed in the suit. According to Hindi Calendar, Miti Asoj Badi Amavashya falls on 26.10.1973, while a look at application filed for the first time thereafter, for depositing the rent, being dt. 17.2.1975, available on record at D-38 shows, that thereby the defendant purported to deposit the rent for the period 22.12.1973 to 19.3.1975, and thereafter, the rent from 20.3.1975 to 19.3.1976 was deposited vide application dt. 16.2.1976. Then, rent from 20.3.1976 to 19.3.1977 was deposited vide application dt. 19.1.1977. Similarly the rent from 19.3.1977 to 20.3.1978 was deposited vide application dt. 22.2.1978, and rent from 20.3.1978 to 20.3.1979 was deposited vide application dt. 20.1.1979. Thus, in addition to what has been found by the

learned lower Appellate Court, it is further clear, that rent for the period 27.10.1973 to 22.12.1973, has not at all been deposited by the defendant. Likewise, after looking at the applications, I am at one with the findings of the learned lower Appellate Court about the dates of deposit of the rents annually, and significantly, this factual aspect was not disputed either, on the side of the appellant. That being the position, on the face of language of Section 13(7) of the Act, it cannot be said, that the tenant had made deposit or made payment, as required by sub-section 4 or sub-section 5, so as to entitle him to avoid passing of the decree for eviction on the ground of default. May be, that the initial order of striking out of the defense passed on 6.9.1975 has been set aside vide order dt. 21.5.1976, and may be, that even thereafter, the plaintiff may not have filed application for striking out the defense of the defendant under Section 13(6) of the Act, but then, the fact does remain, that within the meaning of Section 13(7), it cannot be said, that the tenant had made deposit or made payment as required by sub-section 4 or sub-section 5, so as to entitle to avoid passing of the decree for eviction on the ground of default. That being the position, the decree for eviction, on the ground of default, has rightly been passed/upheld by the learned lower Appellate Court. I am supported, in my above view, by the judgment of this Court, in Jagan Nath Vs. Heera Chand, reported in 2001(1) DNJ (Raj.)-431. Thus,

the appeal filed by the appellant lacks merit, and is required to be dismissed.

Thus, the substantial question of law as framed on 14.8.1986 being whether the courts below were wrong in holding that the defendant had committed default in depositing monthly rent pending the suit after the determination of rent u/s. 13(4) of the Raj. Premises (Control of Rent and Eviction) Act, and therefore, he was liable to ejectment is answered in negative and against the appellant.

Coming to the cross objections, since the decree for eviction is being maintained on the ground of default, deciding cross objections on merits is no better than academic exercise, and therefore, I need not go into it.

The net result of the aforesaid discussion is that the appeal fails, and is dismissed, and the cross objections are merely disposed of as remaining academic.

At this stage, learned counsel for the appellant submitted that since the appellant is carrying on business in the premises for a very long time, he should be granted some reasonable time to vacate the premises. Having considering this submission, with the consent of both the learned counsel, the appellant is granted one year's time

to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit the amount equal to the monthly rent, by way of damages for use and occupation, by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondents will automatically become entitled to execute the decree forthwith.

( N P GUPTA ),J.

/Sushil/